HIGH COURT OF UTTARANCHAL AT- NAINITAL

Writ Petition No. 43(S/B) 2004

Data Ram Joshi S/o Sri Jagat Ram Joshi,
Serving as Project Director,
District Rural Development Agency,
Chamoli. … Petitioner.

Vs.

State of Uttaranchal through,
Principal Sectetary, Department of
Rural Development, Uttaranchal Shasan,
Dehradun and two others. … Respondents.

Sri. Manoj Tewari, Ad. For the petitioner.
Learned Chief Standing Counsel for the respondent no. 1 & 2,
Learned Standing Counsel for Govt. of India.

Dated: March 5, 2004:

Hon'ble M.M. Ghildiyal, J.
Hon'ble Rajesh Tandon, J.

Heard Sri. Manoj Tewari, Ad. for the petitioner, learned Chief Standing Counsel for the respondent no. 1 & 2 and learned Standing Counsel for Govt. of India.

By means of this writ petition the petitioner has prayed for the issue of a writ order or direction in the nature of certiorari for quashing the impugned transfer order dated 27.02.2004 passed by respondent no. 1. Further with a prayer to issue of a writ, order or direction in the nature of mandamus restraining the respondents from interfering with the functioning of the petitioner as Project Director, District Rural Development Agency, Chamoli.

Brief facts giving rise to the present writ petition are that initially the petitioner was appointed on the post of Block Development Officer on the recommendation of Public Service Commission U.P. in the year 1991. Thereafter the petitioner was sent on deputation in Swajal Project funded by the World Bank where he served initially as Project Manager then he served in the capacity of Deputy Project Manager, Human Resource Development.

On 3.2.2003 the respondent no. 1 has passed an order by which the petitioner was posted as Project Director, District Rural Development Agency, Chamoli and the petitioner was relieved from

Swajal Project on 28.02.2003 and he took over charge as Project Director, District Rural Development Agency on 3.3.2003.

Counsel for the petitioner has submitted that the District rural Development Agencies have been established in each district within the country to oversee the implementation of different antipoverty programmes. A new centrally sponsored scheme for strengthening the District Rural Development Agencies have been introduced w.e.f. 1.4.99 based between Center and State aims and major part of administrative costs of the Agencies is borne by the Central Govt. which also has been issued guidelines titled as Guidelines on D.R.D.A. Para 4.5 of the guidelines provides that Project Directors, A.P.Os. and other technical staff must have a minimum tenure of 2-3 years and only under exceptional circumstances they can be shifted. A number of projects funded by the Central Govt. as well as the State are being implemented by the DRDA, Chamoli and the funds allocated to it has to be utilized before 31.3.24 otherwise not only the funds shall lapse but the future funding for the next financial year would also be proportionately reduced. As such, transfer of Project Director from District Rural Development Agency, Chamoli at this stage would adversely affects the public interest.

The grievance of the petitioner is that not in less than a year he has again been transferred as Project Director District Rural Development Agency, Bageshwar vide order dated 27.02.2004 and in the impugned order it has been mentioned that the transfer of the petitioner is being made in public interest. The transfer order reveals that no other person has been posted in his place.

Counsel for the petitioner has submitted that in the absence of a Project Director, there would be no one to monitor and implement the programme.

The petitioner has submitted that according to the Model Code of Conduct, after notification of election process, the State Govt. cannot pass any transfer order in respect of its officers. The transfer order in question was passed after notification of the election process, however, with a view to escape the clutches of law, the said order has been antedated to 27.02.2004.

In Shilpa Bose & others v. State of Bihar & others reported in AIR 1991 Supreme Court 532 it has been held that the transfer orders are not amenable to writ jurisdiction under Article 226 of the Constitution of India. The observations of the Apex court are quoted below:-

"In our opinion, the courts should not interfere with the transfer order which are made in public interest and for administrative reasons unless the transfer orders are made in violation of any mandatory statutory rule or on the ground of mala fide. A Government servant holding a transferable post has no vested right to remain posted at one place or the other, he is liable to be transferred from one place to the other. Transfer orders issued by the competent authority do not violate any of his legal rights. Even if a transfer order is passed in violation of executive instructions or orders, the Courts ordinarily should not interfere with the order instead affected party ***should approach the higher authorities in the Department.*** *If the Courts continue to interfere with day-to-day transfer orders issued by the government and its subordinate authorities, there will be complete chaos in the administration which should not be conducive to public interest. The High Court over looked these aspects in interfering with the transfer orders."*

Transfer order having been passed in the public interest, no interference under Article 226 of the Constitution of India can be made. However, the petitioner has been given liberty to approach the higher authority in view of the judgment (supra).

Learned counsel for the petitioner has confined his argument that the petitioner is ready to raise his grievance by way of representation before the authority concerned.

However, in the view of the facts and circumstances narrated above it will be in the interest of justice that if the petitioner files a representation before the authority concerned, the authority concerned shall dispose of the same in accordance with law within a period of one month from the date of filling of the certified copy of this order.

For a period of six weeks, the transfer order shall remain in abeyance.

With the aforesaid observations, the writ petition is disposed of finally. No order as to costs.

(Rajesh Tandon J.) **(M.M. Ghildiyal J.)**

March 5, 2004:
NCM: